

**REPORT - PLANNING COMMISSION MEETING  
July 8, 2004**

**Applicant:** VAN UONG – 37678 Fremont Boulevard (PLN2004-00271)

**Proposal:** A Conditional Use Permit to change legal nonconforming commercial uses of a 1,878-square foot building zoned R-G-19, to similar uses, or uses of lesser intensity.

**Recommended Action:** Approve, subject to conditions

**Location:** 37678 Fremont Boulevard, in the Centerville Planning Area.

**Assessors Parcel Number:** 501-1470-26-2

**Area:** .91 acres

**Owner:** Van Uong

**Agent of Applicant:** None

**Consultants:** None

**Environmental Review:** Categorically Exempt per section 15301(a), minor alterations to an existing building

**Existing General Plan:** Residential – High 23-27 du/ac

**Existing Zoning:** R-G-19, Residential Garden Apartment District (1,900 square foot of land area per unit)

**Existing Land Use:** One legal nonconforming commercial building and six residential units

**Public Hearing Notice:** Public hearing notification is applicable. One hundred seventy-one notices were mailed to owners and occupants of property within a minimum radius of 300 feet of the site on the following streets: Fremont Boulevard, Peralta Boulevard, Parish Avenue, and Bettencourt Court. All notices to owners and occupants of property were mailed on June 25. A Public Hearing Notice was delivered to The Argus Newspaper on June 21, 2004, to be published by June 29, 2004.

**Executive Summary:** The subject property was built in 1948, prior to the City's incorporation in 1956. The zoning of the property is a Residential Garden Apartment District (R-G-19). There is a 1,878 square foot legal non-conforming commercial building with six residential units located behind it. According to City records, the original use of the commercial building was a tavern and gasoline service station. Within the last four months, the building contained three businesses that included an insurance broker, a real estate office, and a travel agency. The building is considered to be legal, nonconforming because the R-G zoning district does not permit commercial uses. However; because the building has continued to have commercial uses since it was constructed in 1948, the continued commercial use is legal non-conforming. A Conditional Use Permit is required in order to change a legal non-conforming use of the building to a similar use or use of lesser intensity. In order to streamline the approval process for future tenants, and avoid the necessity for multiple Conditional Use Permits, staff asked the applicant to develop a comprehensive list of uses that could potentially occupy the building and apply for just one Conditional Use Permit.

**Background:** The subject site is a 39,600 square foot lot that was developed in 1948, and consists of a 1,878 square foot commercial building with a 13-stall paved parking lot fronting on Fremont Boulevard. The building contains three tenant spaces ranging from 500 to 800 square feet. There are also six residential units (two duplexes and two single-family dwellings) located on the same parcel directly behind the commercial building. Although the property is not listed as a primary or secondary historic resource, staff has determined that the residences have historical significance based on their architectural design. No changes are proposed to the residences with this Conditional Use Permit application.

Approximately one-quarter of the site is used for the commercial use. According to City records, there has been a continuous operation of commercial businesses including a tavern, a gasoline service station, an insurance broker, a real estate office, and a travel agency. Section 8-22303 of the Fremont Municipal code states that a nonconforming use of a structure or building may be changed to a similar use, or a use of lesser intensity, upon approval of a conditional use permit by the Planning Commission. It states that a use of lesser intensity is a use which requires fewer employees or less public contact, less storage capacity or less service demands on public facilities or energy, and is more compatible with adjacent future planned uses. Based on this criteria and staff's desire to streamline the approval process for future businesses, the applicant developed a list of uses (see list under the proposal section of this report) which could potentially occupy the building and are similar uses or uses of lesser intensity. Staff believes the proposed uses are appropriate and compatible uses for the neighborhood and meet the spirit and intent of the non-conforming section of the ordinance.

**Proposal:** The applicant and staff discussed the potential impact of each type of business proposed. Staff considered the impact of the uses relative to their compatibility with the surrounding area, required parking, and classification in the development impact fee categories. Because of these compatibility concerns, a condition is included to prohibit drive-through facilities (see condition A-3). The applicant has indicated that they have a prospective tenant who is interested in leasing the entire building. If this occurs, the floor plan provided in the enclosure will be modified to accommodate this tenant. The following uses were determined to be of equal or less intensity than the uses that originally occupied the property:

- Apparel & accessories - Retail
- Accounting auditing and bookkeeping services
- Advertising sales service
- Auto and home supply stores
- Beauty and barbershops
- Business services except establishments engaged in renting or leasing machinery tools or other equipment
- Carpet and upholstery services (off-site only)
- Clothing and costume rental
- Communication services not elsewhere classified
- Dog grooming service
- Drain cleaning services
- Dressmaking in conjunction with dress sales
- Dry cleaners (drop off only)
- Eating places (non drive-through only)
- Electrolysis
- Engineering, architectural and surveying services
- Finance insurance and real estate
- Food Stores, except slaughter
- Furniture
- General offices for businesses and manufacturing firms
- Hardware
- Laundromats (coin-operated)
- Legal services
- Locksmith shops
- Miscellaneous General merchandise, except adult bookstores, firearm dealers and head shops

Photocopying services

Photographic studios and portraits

Radio and television repair services

Repair services for bicycles, camera, lawn mower, leather goods and business machines

Retail – variety stores

Sales and rental of videotapes and equipment

Shoe repair, shoeshine and hat cleaning services

Tanning salon

Tax preparation service

Travel agencies

**Parking:** The property has thirteen existing parking stalls dedicated to the commercial building. The potential uses of the property were based on the number of on-site parking spaces. To ensure there will be adequate parking available to serve the businesses on the site, staff has placed a limitation on the size of a future restaurant. Because eating establishments require a greater number of parking spaces than other types of retail uses, staff conditioned any future restaurant to be limited to 800 square feet of usable area, exclusive of storage (refer to condition no. 2). A restaurant requires one parking space per 100 square feet; therefore, eight parking spaces will be required. Based on this factor, there will be five parking spaces available for the two remaining tenant spaces in the building that total approximately 1,000 square feet. Based on a parking ratio of up to one space per 200 square feet, five parking spaces will be needed. Since the majority of the retail and service uses proposed by the applicant require one parking space per 300 square feet, there will be sufficient parking available.

**Adjacent Land Uses:** The subject property is adjacent to the Centerville Junior High School to the east, the Holy Spirit church to the north, and a single-family residence to the west. Several multi-family dwellings are located on the opposite side of Fremont Boulevard.

**Hours of Operation:** The applicant states that the proposed businesses will typically be open from 8 a.m. to 8 p.m. The applicant indicated that if there were to be a doughnut shop in the building, the hours of operation would begin at 6 a.m. To prevent late night noise issues, staff has included a condition that businesses may only operate between 6 a.m. and 10 p.m.

**Aesthetics:** The building has recently undergone a “facelift”. The applicant repaired and repainted the exterior walls and parapet of the building with a neutral color. They have also installed new windows. To enhance the appearance of the parking lot, the applicant will extend both of the 24-inch brick planters along the Fremont Boulevard frontage by approximately six feet each. They will also add additional flowers in the planters to enhance the appearance of the property.

**Land Use Compatibility:** Staff believes the proposed use of the building is compatible with the surrounding uses because the previous uses served the neighborhood, and the proposed uses are compatible with the nearby residential uses as they will not generate a higher traffic volume or create adverse noise impacts.

**General Plan Compatibility:** The City’s General Plan states that mixed-use developments may include a mixture of residential and commercial uses on one lot and within a single development project. The mixture can be separate commercial and residential structures on the same parcel of land, or it can be mixed uses with compatible commercial and residential uses. Goal F-6 of the Fremont General Plan states that each of the City’s original historic districts and emerging community areas is unique and important to Fremont’s character as a city. Although the building is not located with an historic district, the residential buildings on the property, per staff’s determination, have historic value based on their architecture. Preserving and enhancing the unique identities of each of the city’s areas does not preclude identification with the city as a whole. The project conforms to the goals and the objectives of sub-area 10 of the Centerville Specific Plan.

**Response from neighbors:** To date, staff has not received any comments from owners and occupants in the vicinity.

**Enclosures:** Site Plan; Floor Plan; Statement of justification from applicant.

**Exhibits:** Exhibit "A" (Site Plan and Floor Plan)

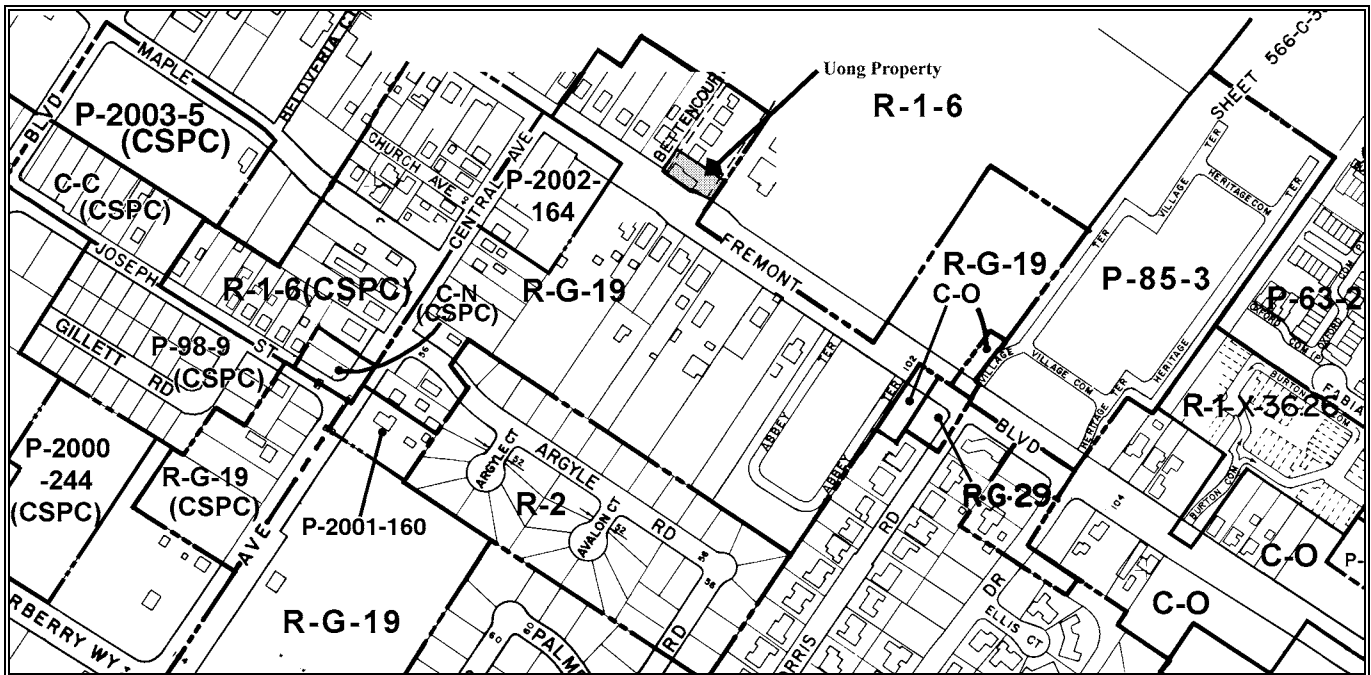
Exhibit "B" (Findings and Conditions of approval)

**Recommended Action:**

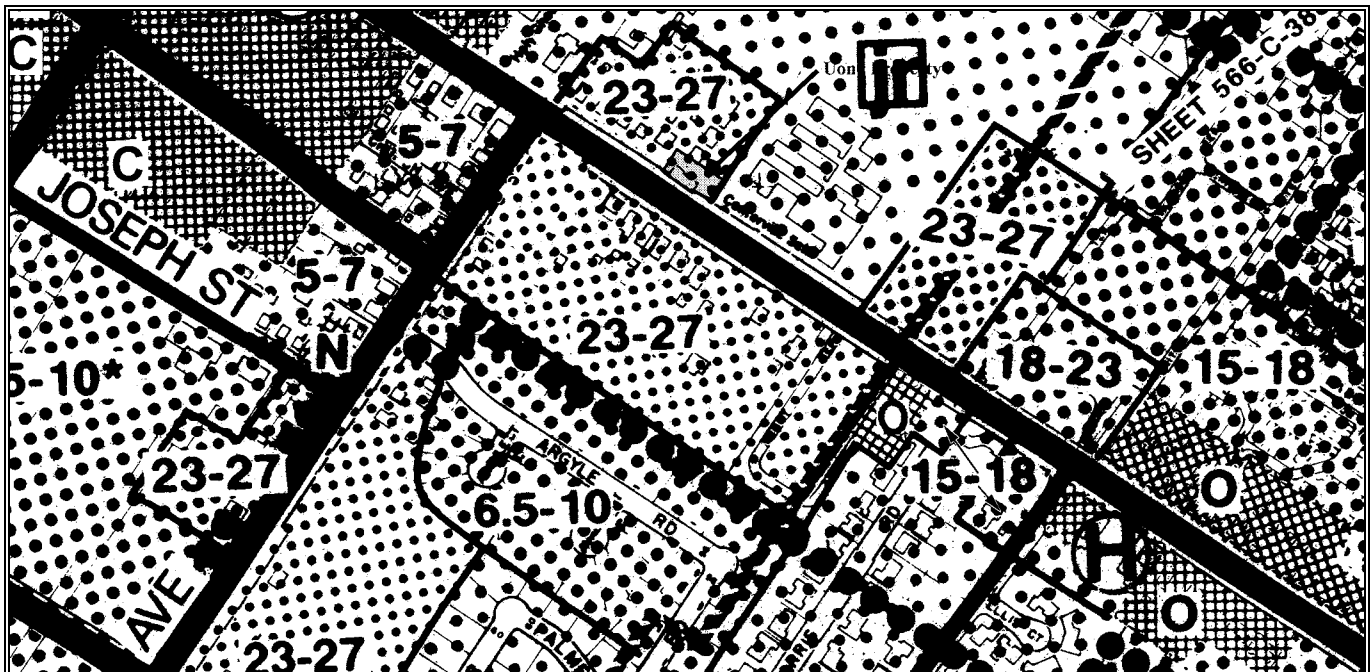
1. Hold public hearing.
2. Find PLN2004-00271 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include goal F-6, which states that each of the City's original historic districts and emerging community areas is unique and important to Fremont's character as a city. Preserving and enhancing the unique identities of each of the city's areas does not preclude identification with the city as a whole. The project conforms to the goals and the objectives of sub-area 10 of the Centerville Specific Plan.
3. Find PLN2004-00271 as per Exhibit "B" fulfills the applicable requirements set forth in the Fremont Municipal Code.

## Existing Zoning

Shaded Area represents the Project Site



## Existing General Plan



**EXHIBIT "B"**  
**UONG (PLN2004-00271)**  
**CONDITIONAL USE PERMIT**

**FINDINGS**

The findings below are made on the basis of information contained in the staff report and evidence presented at the public hearing to the Planning Commission dated July 8, 2004 incorporated hereby.

1. The proposed uses are consistent with the General Plan designation for the site, since a Conditional Use Permit is required in order to change the legal non-conforming use of the building to similar uses or uses of lesser intensity.
2. The site is suitable and adequate for the proposed uses because conditions of approval have been added to ensure the proposed uses do not have an adverse impact on the adjoining uses and properties because the site contains adequate parking and that no drive-through facilities are allowed.
3. The proposed uses would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or other public facilities or services because all roadway improvements adjacent to the project site have been completed. Sufficient parking is provided, points of ingress-egress are properly located, and adequate fire fighting equipment access and facilities are available.
4. The proposed uses would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large because the facility is properly regulated with adequate parking, and is designed to limit impacts on surrounding occupants based on the allowable uses of the building.
5. The design of the project is compatible with existing and proposed development within the district and its surroundings because the proposed uses are regulated by conditions of approval to be compatible with adjacent residential uses.
6. The proposed uses have regular pedestrian and vehicular ingress and egress from the project property.

**CONDITIONS:**

The conditions below are made on the basis of information contained in the staff report to the Planning Commission dated July 8, 2004 incorporated herein.

**Conditions to be Complied with Prior to the Issuance of Building Permits:**

- A-1. The project shall conform to Exhibit "A" (Site Plan), and all conditions of approval of PLN2004-00271
- A-2. Restaurant uses shall be limited to 800 square feet (excluding storage).
- A-3. Drive-through facilities shall not be permitted.
- A-4. The hours of operation shall be limited to 6 a.m. and 10 p.m., Monday through Sunday.
- A-5. The commercial building shall not be enlarged.
- A-6. The applicant shall extend the existing brick planters and irrigation along the Fremont Boulevard frontage by six feet each, as annotated on Exhibit "A".
- A-7. The following uses only apply to the existing 1,878 square foot commercial building fronting onto Fremont Boulevard:

Apparel & accessories - Retail

Accounting auditing and Bookkeeping services  
Advertising sales service  
Auto and home supply stores  
Beauty and barbershops  
Business services except establishments engaged in renting or leasing machinery tools or other equipment  
Carpet and upholstery services (off-site only)  
Clothing and costume rental  
Communication services not elsewhere classified  
Dog grooming service  
Drain cleaning services  
Dressmaking in conjunction with dress sales  
Dry cleaners (drop off only)  
Eating places (no drive-through facilities permitted)  
Electrolysis  
Engineering, architectural and surveying services  
Finance insurance and real estate  
Food Stores, except slaughter  
Furniture  
General offices for businesses and manufacturing firms  
Hardware  
Laundromats (coin-operated)  
Legal services  
Locksmith shops  
Miscellaneous General merchandise, except adult bookstores, firearm dealers and head shops  
Photocopying services  
Photographic studios and portraits  
Radio and television repair services  
Repair services for bicycles, camera, lawn mower, leather goods and business machines  
Retail – variety stores  
Sales and rental of video tapes and equipment  
Shoe repair, shoeshine and hat cleaning services  
Tanning salon  
Tax preparation service  
Travel agencies